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No. 93-1218

In the Supreme Court of the United States

OCTOBER TERM, 1993

KEVIN K. THOMAS AND BARRY D. THOMAS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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APP

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Petitioners contend that the court of appeals erred in reversing an order suppressing evidence seized from two residences pursuant to search warrants.

1. On January 6, 1992, petitioners were charged in separate informations filed in the United States District Court for the Eastern District of Tennessee with manufacturing marijuana, in violation of 21 U.S.C. 841(a)(1) and 842(b)(1)(B). Petitioner Kevin Thomas was also named in a criminal forfeiture count seeking to forfeit to the government all of his interest in two properties because of the manufacture of marijuana there.

Petitioners moved to suppress evidence seized at both properties pursuant to two search warrants. On September 8, 1992, following the recommendation of the magistrate, Pet. App. 2a-37a, the district court suppressed the evidence seized on the ground that the search warrants were not supported by probable cause, Pet. App. 38a-51a. The court also refused to apply the good faith exception to the exclusionary rule set forth in *United States* v. *Leon*, 468 U.S. 897 (1984).

The court of appeals reversed. Pet. App. 52a-76a. The court found that there was sufficient corroboration for two anonymous letters that were used as part of the basis for the probable cause that was proffered to support the issuance of the warrants.

2. Petitioners contend that the court of appeals improperly allowed corroboration of an anonymous letter by public innocent details rather than by corroboration of "future actions of third parties, ordinarily not easily predicted." Pet. i. Whatever the merits of that contention, it is not ripe for review by this Court. The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to suppress. If petitioners are acquitted following a trial on the merits, their current claim will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contention to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly,

review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

MARCH 1994

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* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.